IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3053 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRUBHAI N VAGHELA

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 3053 of 2000

MR JS BRAHMBHATT for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/10/2001

ORAL JUDGEMENT

#. Rule. Mr.Munshaw waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner has been reinstated in service as per the award passed by the Labour Court, Godhra dated 11.2.1994 in Reference (LG) No.541 of 1992. By the said award, the petitioner has been given the benefit of reinstatement with back-wages for the intervening period. It is not in dispute that the petitioner has been reinstated in service by the respondent Corporation.

#. It is argued by Mr.Brahmbhatt that the pay of the petitioner has not been properly fixed and regular increments which were required to be released in his favour have also not been released by the respondent - Corporation. It is submitted that since the petitioner has been reinstated with continuity of service, he is entitled to the periodical increments which otherwise he would have been entitled if he was in actual service of the Corporation.

#. Mr.Munshaw, learned advocate, for the S.T.Corporation argued that since the petitioner was not in actual service at the relevant time, he was not given any benefit of increments. Mr.Munshaw also submitted that as per the Service Regulations of the Corporation, unless the person is in actual service, he cannot get benefit of actual increment. He also submitted that since the petitioner had not worked from 1991 to 1994 that is the period during which the reference was pending, the Corporation has not released the increment in his favour for the aforesaid period. He also relied upon the Service Regulation 69 in order to substantiate his say.

#. However, in my view, once there is an order of continuity of service passed by the Labour Court, it is not open for the Corporation to still rely upon such Service Regulation. Such service regulation can be made applicable in other cases where there is no award of the Court, but once the order of removal is set aside by the Court with continuity of service, the petitioner was entitled to all the benefits including the benefit of increments during the intervening period. When the Corporation had passed the order of removal, naturally, the petitioner was not in a position to attend his duty, therefore, it cannot be said that, on his own volition he had not attended the duty during intervening period and once the order of removal is set aside by the court, he is presumed to be on duty for the relevant period and he is entitled to all consequential benefits accordingly. In that view of the matter, the petitioner is entitled to all consequential benefits for the intervening period including the benefit of periodical increments. The

respondent - Corporation is accordingly directed to fix the pay of the petitioner accordingly and whatever periodical increments which are required to be released in his favour, should be released within one month from today and on that basis pay of the petitioner should be fixed accordingly. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

(P.B.Majmudar,J)
(pathan)